

Where to begin...

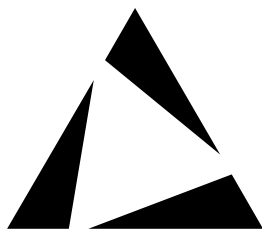
Use this step-by-step guide to simplify the task of creating a nonprofit.

For nearly two decades, the Utah Arts Council's Community/State Partnership Program has assisted organizations in the process of becoming nonprofit. This handbook is intended to be a step-by-step guide to forming a nonprofit, covering the most basic questions. The handbook does not provide legal counsel and is not a substitute for legal or risk management advice. Additionally, it is a supplement to, not a replacement for, the instructions provided by the government entities overseeing nonprofit corporations. These materials are intended to help guide you through the basic elements of incorporation and make the process simpler. If you have further questions or concerns, you are encouraged to seek professional advice. Under no circumstances will the author or the Utah Arts Council be responsible or liable to any person who disregards this warning.

Note: The author of this handbook presumes that in addition to formalizing your organization by registering as a nonprofit in the State of Utah, you will also seek tax-exempt status from the Internal Revenue Service by way of being designated as a 501(c)(3) organization.

Why form a nonprofit?

There are many valid reasons for creating nonprofit organizations. Nonprofits form the backbone of social, cultural, environmental and community services. Nonprofit organizations fill a void left by government agencies and businesses. Generally, the people who become involved in nonprofit causes do so for altruistic reasons. People who desire to form a nonprofit organization are dedicated to improving their communities. Thanks, in part to the federal government's increased reliance on the services nonprofits can provide, nonprofits are growing at an unprecedented rate. In the year 2000, six hundred and sixty-three new nonprofits were formed in Utah.



In order to understand why nonprofits exist, it is helpful to know where nonprofits fit into the larger picture. Visualize a triangle where one corner is the government and services provided by the government such as schools, road maintenance, city parks, national forest areas, public golf courses, etc. The second corner represents the for-profit arena, including private businesses, professional services, Wall Street, and the production of many goods and services. Nonprofits fill the third corner and provide services that the other two sectors cannot or do not provide. The name the "third sector" originates from this concept of three different kinds service providers (government, business and nonprofit) working together to provide all the elements needed to sustain a good quality of life.

Why form a nonprofit? Because you are passionate about a cause; because you need to obtain grant monies to support that cause; and because you need to formalize the concept you believe in, in order to be recognized by other businesses and individuals. There are also financial incentives for becoming a nonprofit beyond the ability to receive donations. Nonprofits can make use of lower postal rates, receive discounts or exemption from property sales and excise taxes, and may receive in-kind services from corporations. The limited liability that directors, officers and employees may enjoy is another benefit of nonprofit status.

If you have a group that has operated informally without financial records or an organizational structure, the main disadvantages to you are the paperwork and fees required to form the organization. With the help of this handbook, the paperwork should be simply a matter of customizing the samples and following the instructions in this handbook.



Can we make a profit?

Yes. In some ways, the title “nonprofit” is misleading. A nonprofit organization can have more income than expenditure. In fact, it is healthy for an organization to have a fiscal reserve to provide insulation against changes in funding, requests for services, or changes in operation. Some nonprofits are fortunate enough to manage an endowment, from which it either spends or reinvests the interest gained on the money.

What distinguishes a nonprofit from a for-profit is not whether the organization makes money but what happens to the profit. Any money that is raised by a nonprofit organization must eventually be used to fulfill the mission of the organization.

In terms of operations, nonprofit organizations should be treated as a business with business interests and needs. However, because of the nature of their missions, nonprofits should never forget that they enjoy the benefits of government subsidy.

Reasons not to form a nonprofit

There are instances when it is more appropriate either to form a for-profit organization or function informally without 501(c)(3) exempt status. The reason to become a for-profit organization is to maintain freedom and autonomy. Founders can create an organization and invest a great deal of time and energy in their vision, only to see the organization changed over time by a volunteer board of directors. If it is important to you as the founder of an organization to always maintain control over the mission and vision of your organization, you should strongly consider forming a for-profit company. The purpose of a *nonprofit* is to *serve the community*, not a limited number of individuals. This is one reason that the government requires nonprofits to have a volunteer board of directors. Volunteer directors promote community ownership of the organization.

FAQ ?

How long does it take to get nonprofit status?

Plan that it will take from three to six months to prepare and process the paperwork. Using the sample documents contained in this handbook, the process of applying for 501(c)(3) status is not as difficult as some people fear. The first step, incorporating with the State of Utah, is simply a matter of preparing the Articles of Incorporation and submitting them to the Division of Corporations. The IRS *Form 1023* and the Bylaws take a bit longer, but are still straightforward. Plan that each interaction with the IRS takes approximately three months.

Can a nonprofit begin operation before it receives the 501(c)(3)-determination letter?

Yes. There are many things a nonprofit can do before it receives the determination letter from the I.R.S. If an organization receives a favorable ruling, the status may be considered retroactive to the date of the filing of the Articles of Incorporation with the State of Utah, up to 15 months, or on appeal, up to 27 months. Donations made prior to the ruling can be accepted and are retroactively tax deductible.

When can we set up a bank account?

To set up a bank account, an organization generally needs to present the following two documents:

- The Tax Identification Number (T.I.N.). The T.I.N. number comes from the I.R.S. and is obtained by applying for an Employer Identification Number using the Form SS-4.
- Proof of registration with the state of Utah, such as the stamped Articles of Incorporation.

Often if there are associated fees, the bank will waive them for a nonprofit organization.

Can nonprofits lobby?

The I.R.S. limits the amount and kind of lobbying nonprofits are allowed to do. Charities are allowed to lobby provided the activity is insubstantial in relation to the overall activities of the organization. Any direct lobbying expenditure must be reported to the I.R.S. As long as you exercise care in the political activities engaged in, and keep the activities limited, you can lobby and keep your organizational status in good standing.

How can you form a for-profit/nonprofit combination?

As a legal entity, a nonprofit can enter into a business activity with a for-profit corporation or other nonprofit corporations. These partnerships can serve all entities well but require extra bookkeeping. You may want to form a partnership with another organization to benefit from some of the for-profit proceeds, such as creating a restaurant that gives its profits to the nonprofit. Or, you may create a for-profit and nonprofit dance studio, the nonprofit side of the equation would typically include the outreach and educational programming and the for-profit would be the studio classes. If you are interested in this type of arrangement, you should seek further advice from a professional.

